	DEPARTMENT OF PUBLIC SAFETY DEPARTMENT ADMINISTRATION POLICY AND PROCEDURES	EFFECTIVE DATE: April 23, 2020	POLICY NO.: COR.15.06
		SUPERSEDES (Policy No. & Date): NEW	
SUBJECT: NON-DISCRIMINATION AND ACCESSIBILITY FOR VISITORS/GUESTS WITH DISABILITIES		Page 1 of 11	

1.0 PURPOSE

The purpose of this policy is to provide clear guidelines that the department shall not discriminate on any visitor or guest based on disability.

2.0 SCOPE

This policy applies to all correctional facilities, PSD staff, contractors, and volunteers. To the extent any individual facility's policy conflicts with the statewide policy, the statewide policy shall control.

3.0 REFERENCES, DEFINITIONS AND FORMS

.1 References

- a. Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-12134.
- b. 28 CFR Part 35, Americans with Disabilities Act of 1990, Title II Regulations, Nondiscrimination on the Basis of Disability in State and Local Government Services.
- c. 28 CFR Part 35.151 and ADA Accessibility Guidelines (ADAAG), 2010 ADA Standards for Accessible Design, Department of Justice.
- d. U.S. Department of Justice Civil Rights Division, Disability Rights Section, ADA 2010 Revised Requirements, September 15, 2010, Service Animals.
- e. HRS § 347-2.5 and -13, Blind, Visually Handicapped, and Other Disabled Persons.
- f. HRS § 368, Civil Rights Commission.
- g. Governor's Administrative Directive, NO.12-06, Accessibility to State Government by Persons with Disabilities, December 18, 2012.
- h. PSD, P & P, COR.01.14, Corrections Mission and Goal.
- i. PSD, P & P, COR.14.30, Communication Access
- j. PSD, P & P, COR.15.04, Visitation.

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.2 Definitions

- a. **ADA (Americans with Disabilities Act):** Federal civil rights law prohibiting discrimination based on disability.
- b. **Auxiliary Aids and Services:** Includes, but is not limited to, qualified interpreters on-site or through video remote interpreting (VRI) services, note takers, real-time computer-aided transcription (CART) services, written materials, exchange of written notes, telephone handset amplifiers, assistive listening devices and systems, telephone compatible with hearing aids, closed caption decoders, open and closed captioning, including real-time captioning, voice, text, and video-based telecommunications products and systems, including text telephones (TTY), videophones, and captioned telephones, qualified readers, taped texts, audio recordings, Braille materials and displays, screen reader software, magnification software, optical readers, large print materials, and other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.
- c. **Disability:** With respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such impairment; or being regarded as having such an impairment. The definition of "disability" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA:

1. **Physical or mental impairment:**

- a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, or endocrine.
- b) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- c) The phrase physical or mental impairment includes, but is not limited to, such contagious and non-contagious diseases and

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conditions as orthopedic, visual, speech and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; intellectual disability; emotional illness; specific learning disabilities; HIV (whether symptomatic or asymptomatic); tuberculosis; drug addiction, and alcoholism.

- d) The phrase physical or mental impairment does not include homosexuality or bisexuality.
2. Major life activities: Shall include, but is not limited to caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, reading, communicating and working, interacting with others, and operation of major bodily functions, such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems.
 3. Substantially limits: Shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. "Substantially limits" is not meant to be a demanding standard. The determination of whether an impairment substantially limits a major life activity shall be made without considering corrective measures (e.g. medicine to treat disability, durable medical equipment for mobility impairment), except for the beneficial effects of ordinary eyeglasses or contact lenses.
 4. Has a record of such an impairment: Has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
 5. Is regarded as having an impairment:
 - a) This includes an inmate who:
 - i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a public entity as constituting such a limitation;

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- ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
- iii) Has none of the impairments defined in paragraph 1 of this definition, but is treated by a public entity as having such an impairment.

6. The term disability does not include:

- a) Pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
 - b) Compulsive gambling, kleptomania, or pyromania; and/or
 - c) Psychoactive substance use disorders resulting from current illegal use of drugs.
- d. Facility ADA Coordinator (FC): A Department employee, who is trained on all ADA requirements and who oversees all ADA issues at that facility.
 - e. Miniature Horse: A horse that generally ranges in height from 24 inches to 34 inches measured to the shoulders and generally ranges in weight between 70 and 100 pounds.
 - f. Qualified Individual with a Disability: An individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, is able to meet the essential eligibility requirements for the receipt of services or the participation in applicable programs or activities.
 - g. Reasonable Modification: A modification in established policies or procedures, or the manner in which tasks are completed that enables a qualified individual with a disability to participate in and receive the same benefits from a program or service, or the opportunity to receive the same benefit of service, unless to do so would result in a fundamental alteration in the nature of a program or activity, or result in undue financial and administrative burdens on the Department.

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- h. **Service Animal:** Any dog that is individually trained to do work or perform a task for the benefit of an individual with a disability, including a physical, sensory, intellectual, or other mental disability (i.e. guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with a mental illness to take prescribed medication, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties). A companion or comfort animal is not a service animal, unless it meets the above definition. Service animals are not required to have any documentation stating that it is a service animal.
- i. **Statewide ADA Coordinator (SWAC):** A central Department employee, who is trained in all ADA requirements, who will be knowledgeable regarding the ADA, and will be responsible for the implementation of ADA standards and policies and procedures. The Statewide ADA Coordinator will also review all staff decisions on inmate requests or need for reasonable accommodations, including those that are modified from the original request, or denied.

.3 Forms

- a. PSD 8777, Notice to the Public Concerning the Americans with Disabilities Act (attached).
- b. PSD 8778, Grievance Procedure Under the Americans with Disabilities Act for Members of the Public (attached).

4.0 POLICY

- .1 The Department prohibits discrimination or unfair/illegal treatment on the presence of a physical, mental, or sensory disability.
- .2 The Department shall make reasonable modifications to rules, policies, or practices, remove architectural, communication, or transportation barriers, provide auxiliary aids and services, or take any other steps required under federal and state law, regulations, or policies and Executive Orders for members of the public with disabilities to ensure equal access to inmate visits, programs and services.

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- a. Such reasonable modifications may include allowing the visitor to enter the facility with special equipment, a service animal, miniature horse, wheelchair, etc.

- .3 The Department is not required to take any action that would fundamentally alter the nature of its programs or services or impose an undue financial or administrative burden. The decision that a particular aid or service would result in an undue financial or administrative burden or fundamental alteration must be made by the Director or its designee, and must be accompanied by a written statement in response to a request of the reasons for reaching that conclusion.

- .4 The Department shall not charge a fee, to individuals with a disability, to cover the Department's cost for providing auxiliary aids/services provided in accordance with PSD, P & P, COR.14.30, Communication Access or for reasonable modifications of policies, practices, or procedures. The Department is required to give primary consideration to the type of auxiliary aid or service requested by the person with the disability. The Department must honor that choice, unless it can demonstrate that another equally effective means of communication is available or that the aid or service requested would fundamentally alter the nature of the program, service, or activity or would result in undue financial and administrative burdens. If the choice expressed by the person with a disability would result in an undue burden or a fundamental alteration, the Department still has an obligation to provide another aid or service that provides effective communication, if possible.

- .5 The Department will enforce and comply with all applicable federal and state laws, regulations, policies and Executive Orders regarding non-discrimination and accessibility for individuals with disabilities.

- .6 The Department shall not retaliate against any member of the public who files any type of complaint or otherwise opposes any act or practice made unlawful under the ADA. The Department shall not interfere, coerce, threaten, or intimidate any individual on account of his or her having exercised or enjoyed a right protected under the ADA.

- .7 This policy applies to members of the public who enter any Department facility/office or participate in any Department sponsored program, service, or activity as a visitor and guest, including inmate visitors.

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- .8 The Department may impose legitimate safety requirements for the safe operation of its services, programs, and activities so long as these safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

5.0 PROCEDURES

.1 Service Animals

Generally, Department staff, as outlined in U.S. Department of Justice Civil Rights Division, Disability Rights Section, ADA 2010 Revised Requirements, September 15, 2010, Service Animals, will allow service animals to accompany people with disabilities in all areas of facilities where members of the public are normally allowed to go.

- a. When it is not obvious what service the animal provides, only limited questions are allowed. Staff may ask:

1. Is the dog/miniature horse a service animal required because of a disability?
2. What work or task has the dog/miniature horse been trained to perform?

(Note: Staff cannot ask about the person's disability, require medical documentation, require a specific identification card or training documentation for the dog/miniature horse, or ask that the dog demonstrate its ability to perform the work or task.)

b. Service Dogs

1. Visitors shall be advised that service dogs shall be searched.
2. Service dogs must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the visitor's disability prevents using these devices. In such case, the visitor must maintain control of the animal through voice, signal, or other effective controls.
3. Shall have their collars/harnesses searched by staff and may be required to pass through the facility's metal detector.

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4. While service dogs may be permitted in the visitation area, the visitor shall be advised that if the dog becomes out of control and the visitor does not take effective action to control it or if the dog is not housebroken, the visitor shall be advised that the visitor must remove the service dog but may still have visitation privileges without the dog's presence. The Department is not required to watch or otherwise be in custody of the dog to allow visitation to occur.
5. The visitor shall be liable for all actions of the service animal while on facility grounds.

c. **Miniature Horses**

1. The Department shall permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability where reasonable. This includes allowing such miniature horses to accompany people with disabilities in all areas of facilities where members of the public are normally allowed to go.
2. In determining whether a miniature horse can be permitted into a specific facility, staff shall consider the following factors:
 - a) whether the miniature horse is housebroken;
 - b) whether the handler has sufficient control of the miniature horse;
 - c) whether the specific facility can accommodate the miniature horse's type, size, and weight; and
 - d) whether the miniature horse's presence in the specific facility will not compromise legitimate safety requirements that are necessary for the safety and security of individuals and facility operations.
3. Visitors shall be advised that service miniature horses shall be searched.
4. Miniature horses must be harnessed, leashed, or tethered, unless these devices interfere with the animal's work or the visitor's disability

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prevents using these devices. In such case, the visitor must maintain control of the animal through voice, signal, or other effective controls.

5. Shall have their collars, harnesses, etc. searched by staff and may be required to pass through the facility's metal detector.
6. While miniature horses may be permitted in the visitation area, the visitor shall be advised that if the animal out of control and the visitor does not take effective action to control it or if the animal is not housetrained, the visitor must remove the miniature horse but may still have visitation privileges without the animal's presence. The Department is not required to watch or otherwise be in custody of the horse to allow visitation to occur
7. The visitor shall be liable for all actions of the miniature horse while on facility grounds.

.2 Non-Discrimination

- a. The Department will provide access to services available to visitors and guests in a fair and impartial manner. All staff involved in providing access to visitors/guests will:
 1. Help prevent discrimination from occurring by identifying practices or procedures that could have the effect of discrimination, and
 2. Prohibit discrimination when providing access to Department programs, services and/or activities.

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.3 Visitor/Guest Requests for Accommodation

It is recommended that individuals with disabilities requiring reasonable modification to policies, practices, or procedures, removal of architectural, communication, or transportation barriers, or auxiliary aids or services contact the facility they will be visiting at least five (5) business days (Monday through Friday) before their visit. Regardless of whether the individual with disabilities has submitted a request prior to their visit, the Department shall provide the accommodation or reasonable modification, as required under the ADA, unless the Department can establish that doing so would result in a fundamental alteration or undue financial or administrative burden.

.4 Public Notice

Facility ADA Coordinators and other staff will ensure that the information contained in form PSD 8777, Notice to the Public Concerning the Americans with Disability Act is posted in all reception and/or public access areas. The information will also be posted on the Department's website, as well as facility websites.

.5 Grievance Process

- a. Members of the public who believe that they were subjected to disability discrimination may file a grievance in accordance with form PSD 8778, Grievance Procedure under the Americans with Disabilities Act for Members of the Public.
- b. The complaint should be in writing and contain information about the alleged discrimination, such as name, address, and phone number of the complainant, and its location/facility, date, and description of the problem. Alternative means of filing complaints, such as personal interviews or an audio recording of the complaint, will be made available for individuals with disabilities upon request.
- c. The grievant or his/her designee should submit the complaint to the Statewide ADA Corrections Coordinator as soon as possible. It is recommended that the grievant submit the complaint no later than 60 calendar days after the alleged violation to the Statewide ADA Corrections Coordinator.

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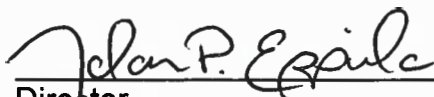
- d. Within 15 calendar days after receipt of the complaint, the Statewide ADA Corrections Coordinator or his/her designee will meet with the complainant in person, by telephone, or by other means to discuss the complaint and the possible resolutions. Following the meeting, the Statewide ADA Corrections Coordinator/designee will respond in writing and, where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio recording. The response will explain the Department's position and offer options for substantive resolution of the complaint.
- e. If the Statewide ADA Corrections Coordinator/designee's response does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the Director or his/her designee.
- f. Within 15 calendar days after receipt of the appeal, the Director or his/her designee will arrange to meet with the complainant in person, by telephone, or by other means to discuss the complaint and possible resolutions. Within 15 calendar days of the meeting, the Director/designee will respond in writing and, where appropriate, a format accessible to the complainant with a final resolution of the complaint.

APPROVAL RECOMMENDED:


 Deputy Director for Corrections

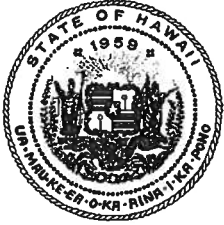
April 23, 2020
 Date

APPROVED:


 Director

April 23, 2020
 Date

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DEPARTMENT OF PUBLIC SAFETY

**NOTICE TO THE PUBLIC
CONCERNING THE
AMERICANS WITH DISABILITIES ACT**



Per Title II of the American's with Disabilities Act of 1990 ("ADA"), the Department of Public Safety ("Department") will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

Effective Communication: The Department will generally, upon request, provide appropriate aids and services leading to effective communication for qualified individuals with disabilities so they can participate equally in the Department's programs, services, and activities. This may include providing qualified sign language interpreters, documents in Braille or alternative format, and other ways of making information and communications accessible to individuals who have speech, hearing, or vision impairments.

Modifications to Policies and Procedures: The Department will make reasonable modifications to policies and programs to ensure that individuals with disabilities have an equal opportunity to participate in all of its programs, services, and activities.

Anyone who requires an auxiliary aid or service for effective communication or a modification of policies or procedures to participate in a Department program, service, or activity should contact the Facility ADA Coordinator as soon as possible. It is recommended that individuals with disabilities submit such requests no later than five (5) business days (Monday through Friday) before the scheduled event.

The ADA does not require the Department to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden. The Department may impose legitimate safety requirements for the safe operation of its services, programs, and activities so long as these safety requirements are based on actual risks.

Grievances that a Department program, service, or activity is not accessible to individuals with disabilities should be directed to the Statewide ADA Corrections Coordinator in accordance with Form 9777, Grievance Procedure Under the Americans with Disabilities Act for Members of the Public.

Individuals with disabilities will not be charged a fee to cover the Department's cost for providing auxiliary aids/services or reasonable modifications of policy.



**GRIEVANCE PROCEDURE UNDER THE
AMERICANS WITH DISABILITIES ACT FOR
MEMBERS OF THE PUBLIC**



This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990 ("ADA"). This procedure applies to members of the public who wish to file a complaint alleging discrimination by the Department of Public Safety ("Department") on the basis of disability in the provision of programs, services, and activities.

The complaint should be in writing and contain information about the alleged discrimination, such as name, address, and phone number of the complainant, and its location/facility, date, and description of the problem. Alternative means of filing complaints, such as personal interviews or an audio recording of the complaint, will be made available for individuals with disabilities upon request.

The grievant or his/her designee should submit the complaint to the Statewide ADA Corrections Coordinator as soon as possible. It is recommended that the grievant submit the complaint no later than 60 calendar days after the alleged violation to:

Statewide ADA Corrections Coordinator
Department of Public Safety, 919 Ala Moana Blvd., Honolulu, HI 96814
(808) 587-1341

Within 15 calendar days after receipt of the complaint, the Statewide ADA Corrections Coordinator or his/her designee will meet with the complainant in person, by telephone, or by other means to discuss the complaint and the possible resolutions. Following the meeting, the Statewide ADA Corrections Coordinator/designee will respond in writing and, where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio recording. The response will explain the Department's position and offer options for substantive resolution of the complaint.

If the Statewide ADA Corrections Coordinator/designee's response does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the Director or his/her designee.

Within 15 calendar days after receipt of the appeal, the Director or his/her designee will arrange to meet with the complainant in person, by telephone, or by other means to discuss the complaint and possible resolutions. Within 15 calendar days of the meeting, the Director/designee will respond in writing and, where appropriate, a format accessible to the complainant with a final resolution of the complaint.